IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO. 1789 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDULAL CHIMANLAL MODI - Applicant(s)
Versus
ASHOK INDUSTRIES & 2 - Opponent(s)

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Appearance :
MR. PRAKASH K. JANI for Applicant.
MR. CHINMAY GANDHI for
MR M.B. GANDHI for Opponent No(s).: 1, 2,3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/07/2005

ORAL JUDGMENT

1. Present is a revision petition under Section-29(2) of the Bombay Rent Act by the dissatisfied plaintiff against the

judgement and decree dated 18th July, 1995 passed in Civil Appeal No.39 of 1995 by the Appellate Bench of the Small Causes Court at Ahmedabad, confirming the judgement and decree dated 26th October, 1994 passed by the learned trial Judge in H.R.P. Suit No.900 of 1988.

2. Mr.P.K.Jani, learned Counsel for the applicant, submitted that since after 1986, the tenant is paying the taxes, therefore, the two Courts below were not justified in observing that the tenant was not obliged to pay the taxes. His submission is that if the tenant has not produced the account books maintained by him in the regular course of business, then, an adverse inference ought to have been drawn against the tenant.

3. Opposing the Revision Application, Mr.Gandhi, learned Counsel for the defendants, submitted that to hold the tenant liable to pay the taxes as a part of rent, the landlord is obliged to prove, to the satisfaction of the Court, that there had been such an agreement or in the alternative, by conduct, the tenant has agreed to enhance the rent to the extent of taxes. His submission is that if the two Courts below have found as a fact that the tenant was not paying the municipal taxes, then, there is no reason for this Court to interfere in the matter.

4. From the judgement of the Appellate Bench, it would appear that the Counsel for the present applicant had submitted before the Bench that he had no grievance about the fixation of the standard rent at Rs.500=00 per month, but, was aggrieved by the fact that the trial Court had observed that the liability to pay the municipal taxes would be that of the tenant. From the facts, it would appear that the present landlord did not let out the suit premises, therefore, under the circumstances, it was not within his personal knowledge to say that the liability to pay the taxes was that of the tenant. Even otherwise, the rent receipts issued prior to 1986 did not mention about the liability of the municipal taxes on the part of the tenant. Since after 1986, the landlord started issuing receipts saying that the liability to pay the municipal taxes would be that of the tenant. It was a lopsided action rather one sided action on the part of the landlord. The landlord does not say that in agreement with the tenant, the rent was enhanced and the tenant had agreed to pay the municipal taxes.

5. The two Courts below, after giving their due considerations to the facts, have recorded the findings that there was no agreement between the parties in relation to the liability of the tenant to pay the municipal taxes. After

going through the records, I am unable to find any fault in the said findings.

6. The Revision deserves to be and is accordingly dismissed. Rule is discharged. No costs.

[***R.S.Garg, J.***]

*kamlesh**